

BEFORE THE COMMISSIONER OF THE
TENNESSEE DEPARTMENT OF SAFETY

IN THE MATTER OF:

TENNESSEE DEPARTMENT
OF SAFETY

v.

\$28,000.00 in U.S. Currency

Seized from: Binh V. Cao

Date of Seizure: September 18, 2006

Claimant: Binh V. Cao

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DOCKET NO. 19.01-094749J

DOS Case No. F6188

INITIAL ORDER

This matter was heard on November 13, 2007, in Knoxville, Tennessee, before John Hicks, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Commissioner of the Tennessee Department of Safety. Lori Long, Staff Attorney for the Tennessee Department of Safety, represented the State. Claimant Binh V. Cao was represented by Arvin H. Reingold of Chattanooga.

The subject of this hearing was the proposed forfeiture of twenty-eight thousand dollars (\$28,000.00) in U.S. currency seized by the Hamilton County Sheriff's Office.

After consideration of the record, it is DETERMINED that the seized \$28,000.00 should be RETURNED to Claimant Binh V. Cao.

FINDINGS OF FACT

1. On September 18, 2006, Deputy Henry C. Ritter of the Hamilton County Sheriff's Office stopped Claimant Binh V. Cao for speeding and a light law violation. Deputy Ritter is

assigned to criminal interdiction on the interstate. A search of the vehicle revealed \$28,000.00 in a duffle bag on the back seat. Claimant Binh V. Cao appeared nervous. A K-9 alerted on the back door of the vehicle.

2. The \$28,000.00 was seized as proceeds from drug transactions.

3. Claimant Binh V. Cao alleges that the money was borrowed to purchase a restaurant.

CONCLUSIONS OF LAW

1. Pursuant to T.C.A. 53-11-451(a)(6)(A), “Goods subject to forfeiture – Seizure-
Disposition-

(a) The following are subject to forfeiture: ...

(6)(A) Everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of the Tennessee Drug Control Act of 1989... compiled in parts 3 and 4 of this chapter and title 39, chapter 17, part 4, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used, or intended to be used, to facilitate any violation of the Tennessee Drug Control Act, ... to the extent of the interest of an owner, by reason of any act or omission established by such owner to have been committed or omitted without such owner’s knowledge or consent; ...”

2. It is CONCLUDED that the State failed to meet its burden of proof that the \$28,000.00 was used in violation of the Tennessee Drug Control Act.

3. It is CONCLUDED that the seized \$28,000.00 are not the proceeds from the sale of drugs and should be returned. This conclusion is based on the fact that no drugs were found in the Claimant’s possession, that there is no evidence of a drug transaction and the \$28,000.00 is not traceable to an exchange for a controlled substance in violation of the Tennessee Drug Control Act.

4. It is CONCLUDED that the mere possession of cash does not rise to the level necessary to show a violation of the Tennessee Drug Control Act.

5. It is CONCLUDED that without a showing that Claimant engaged in illegal drug traffic it is unreasonable to infer criminal activity based on a K-9 hit, the presence of cash, Claimant's nervousness or inconsistencies in Claimant's statements to the officer.

6. It is ORDERED that the seized \$28,000.00 in U.S. currency shall be RETURNED to Claimant Binh V. Cao.

This Initial Order entered and effective this 20th day of February, 2008.

John Hicks
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State this 20th day of February, 2008.

Thomas G. Stovall, Director
Administrative Procedures Division